IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO.199 OF 2006
AND
CRIMINAL MISCELLANEOUS APPLICATION NO.201 OF 2006

CRIMINAL MISCELLANEOUS APPLICATION NO.199 OF 2006

Balchandra Shirodkar
R/o. Naikvaddo,
Calangute, Bardez, Goa
(presently lodged at Judicial lock-up, Panaji-Goa). .... Applicant

Versus

Union of India,
as represented by Shri Diogo D'Souza,
Suptd. Of Customs & Central Excise,
New Customs House,
Panaji-Goa. .... Respondent

CRIMINAL MISCELLANEOUS APPLICATION NO.201 OF 2006

Satish M. Naik,
R/o. H. No.18/1 Vanciovaddo,
Guirim, Bardez, Goa,
(presently lodged at Judicial lock-up, Panaji-Goa). .... Applicant

Versus

Union of India,
as represented by Shri Diogo D'Souza,
Suptd. Of Customs & Central Excise,
New Customs House,
Panaji-Goa. .... Respondent

Ms. Collasso, Advocate for the Applicants.

Mr. Joseph Vaz, Special Public Prosecutor for Respondent.

CORAM: **N. A. BRITTO, J.**

DATE: **4th May, 2006**

ORAL ORDER

Heard Ms. Colasso, learned Counsel on behalf of the Applicant/accused and Shri J. Vaz, learned Special Public Prosecutor on behalf of the Respondent.

2. The accused Balchandra Shirodkar was arrested on 28/03/2006 and was remanded in judicial custody on 29/03/2006. The accused Satish M. Naik was arrested on 5/04/2006 and was remanded to judicial custody on the next date.

3. The case of the Respondent is that on 28/03/2006 at about 6 pm information was received by the Respondent that accused Balchandra Shirodkar would be coming to deliver narcotic drug parcel to one English national who would come on Activa Honda Scooter bearing no. GA-01-B-2900 and accordingly a trap was laid. As per the said information the said foreigner by name Jared Barber, a British national came on the said scooter and the accused Balchandra Shirodkar also came on Kinetic Honda Scooter and both entered the

front gate of Palmarinha Resorts at Calangute with their respective scooters and they were followed by the Respondent/ his officers and thereafter the Applicant Balchandra Shirodkar handed over a small packet to the said British national and at that junction the Applicant Balchandra Shirodkar sensing trouble, took a sharp turn on his scooter and fled away under the cover of darkness seeing the officers of the Respondent only to be arrested later from a telephone booth at Khorlim, Mapusa. On search of the said British national Jared Barber, the said small packet was found to contain 98 gms of Heroin. There is no dispute that the said 98 gms of Heroin were found in the physical possession of the said Jared Barber, on being supplied to him by accused Balchandra Shirodkar. As per the respondent, further investigations revealed that the said supply to accused Balchandra Shirodkar was made by accused Satish M. Naik who is stated to be a Kingpin in Heroin traffic in Goa. Applicant Satish M. Naik was accordingly arrested on 5/04/2006.

4. Both the Applicants /accused approached the learned Special Judge, Mapusa for bail on 31/03/2006 and their applications came to be rejected by order dated 27/04/2006. In rejecting the said bail applications the learned Special Judge observed that the investigations were at the threshold which would necessitate adequate

opportunity being given to the respondents/superintendent of customs, to conduct the investigation. The Applicants/accused were given liberty to move the learned Special Judge in the event there is any circumstances.

5. Ms. Collasso, the learned Counsel on behalf of the Applicants/accused has submitted that the provisions of Section 37 of the NDPS Act, 1985 are not attracted to the case of the Applicants who are sought to be prosecuted under Section 21(b) of the said Act and sufficient time having been elapsed from the date of the arrest of the Applicants/accused they be admitted to bail. Ms. Colasso has also submitted that only because liberty has been given to the Applicants/accused to move the learned Special Judge, there is no reason why the Applicants/accused should not approach this Court. It is her submission that bail could be granted to the Applicants/Accused by this Court as well. On other hand, Shri Joseph Vaz, learned PP has submitted that the Applicants/accused are involved in serious offences and that in order to track done the supply which comes from Mumbai and arrest the other accused involved sufficient time be given to the respondent/superintendent of customs to complete the investigations.

6. Admittedly as far as the involvement of the present Applicants/accused are concerned the investigations appear to have been completed in that after recording the statements of the Applicants, the Respondent/superintendent of customs has not thought of further interrogating the Applicants/accused after they were sent to judicial custody on 29/03/2006 and 6/04/2006 respectively. It is not the case of the Respondent/superintendent of Customs that further investigations can be carried out only by detaining the Applicant/Accused in custody. In my view more than one month has lapsed from the date of the arrest of the Applicant Blachandra Shirodkar and almost a month from the date of the arrest of Applicant Satish M. Naik. This is certainly not a case which has got to be looked at negatively for granting bail in view of the provisions of Section 37 of the Act. The Applicants/accused are being prosecuted under Section 21 (b) of the Act that is to say for having supplied to the said British national Jared Barber, a variable quantity of 98 gms. In my view the right of the accused to be on bail and the right of the respondent/superintendent of customs to carry out further investigations could be balanced by imposing certain conditions and admitting the Applicants/accused to bail. As a result, the applications are granted. Both the Applicants/accused shall be released on bail upon executing a bond of Rs.10,000/- with one surety in the like

amount to the satisfaction of the learned Special Judge, NDPS Court, Mapusa with further condition that until the filing of the charge sheet the Applicants/accused shall report to the Respondent/superintendent of customs once in a week and during the pendency of bail shall not commit any such offences.

Parties to act on the authenticated copy.

Humdast allowed.

N. A. BRITTO, J.

NH